

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

BALESTRIERE PLLC,

Plaintiff,

- against -

JAMAL E. WATSON,

Defendant.

Index No.: 08-cv-578 (RWS)

ECF

**AFFIDAVIT OF CRAIG STUART
LANZA IN SUPPORT OF
PLAINTIFF'S APPLICATION FOR
ENTRY OF DEFAULT JUDGMENT**

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

I, the undersigned Craig Stuart Lanza, being sworn, state as follows:

1. I am a member of the Bar of this Court and am an attorney in the law firm Balestriere Lanza PLLC, formerly called Balestriere PLLC ("Balestriere").

2. I am not a minor, mentally incompetent, nor in the military service of the United States.

3. I make this affidavit pursuant to Rule 55.1 and 55.2(a) of the Civil Rules for the Southern District of New York, in support of plaintiff's application for the entry of a default judgment against defendant.

4. Attached to this affidavit are true and correct copies of the following documents:

Exhibit A - Affidavit of service

Exhibit B - Summary of costs and expenses incurred in this action

5. Plaintiff commenced this action against Defendant by filing its Summons and Complaint with this Court on January 23, 2008.

6. Plaintiff's Complaint sought relief in the amount of \$120,684.74 for non-payment of legal fees for the Firm's defense of Mr. Watson in a criminal matter.

7. For nearly two months, Plaintiff's counsel attempted to serve Mr. Watson with the Summons and Complaint, but these efforts were unavailing.

8. In order to locate the Defendant, Plaintiff's counsel contacted various agencies who had handled Defendant's criminal matter and even attempted to speak with Defendant's probation officer.

9. After learning of Defendant's address, listed as 2151 Route 38 East, Apartment 708, Cherry Hill, New Jersey 08002, Plaintiff's counsel instructed its process server to serve Defendant, but the process server was unable to effect personal service.

10. It appeared plain that Defendant was intentionally eluding service.

11. To that end, Plaintiff's counsel advised its process server to "nail and mail" the Summons and Complaint pursuant to F.R.C.P. 4(e)(1) and N.Y. C.P.L.R. § 308(4). Service by this means was effectuated on May 19, 2008. (*See Exhibit A.*)

12. Under F.R.C.P. 12(a)(1), Defendant had until June 19, 2008, to respond.

13. Notwithstanding, nearly seven months after Plaintiff filed its Complaint, Defendant has failed to file an appearance, submit an answer, or respond in any manner to Plaintiff's Complaint.

14. In connection with prosecuting this action against Mr. Watson, the Firm has spent numerous hours and has incurred costs of \$592.00 in filing fees and service costs. (See Exhibit B.)

15. This action seeks judgment for the liquidated amount of \$120,684.74, with interest at 6.5% from January 23, 2007, amounting to an additional \$3,978.23, plus other costs and disbursements of this action in the amount of \$592.00, for a total of \$125,254.97, as shown by the annexed Statement, which is justly due and owing, and no part of which has been paid as therein set forth.

16. The disbursements sought to be taxed have been made in this action or will necessarily be made herein.

WHEREFORE, plaintiff requests entry of Default and the entry of the annexed Judgment against defendant.

Dated: New York, New York
July 29, 2008



Craig Stuart Lanza

Sworn to before me on 29th, July



Notary Public

JOHN BALESTRIERE
NOTARY PUBLIC STATE OF NEW YORK
NO. 03286121509
QUALIFIED IN COUNTY OF NEW YORK
COMMISSION EXPIRES 01/18/2011

Exhibit A

UNITED STATES DISTRICT COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

BALESTRIERE PLLC.,

X Index No. 08 CV 0578

Plaintiff(s)

Against

JAMAL E. WATSON,

Affidavit of Service of
U.S. District Summons in a
Civil Case with Complaint

Defendant(s)

STATE OF NEW JERSEY, COUNTY OF CAMDEN, SS:

The undersigned, being duly sworn, deposes and says: deponent is not a party herein. is over 18 years of age and resides at BURNINGTON COUNTY, NJ

That on May 19, 2008 at 07:00 PM at the address

2151 ROUTE 38 APT 708
CHERRY HILL, NJ 08002

deponent served the within U.S. District Summons in a Civil Case with Complaint

UPON: JAMAL E. WATSON

By affixing a true copy of the U.S. District Summons in a Civil Case with Complaint to the door of said premises which is the actual place of dwelling of said served with the state.

Deponent was unable, with due diligence, to find said served or a person of suitable age and discretion thereat.

Attempts to serve the defendant were made on the following:

May 05, 2008 at 09:00 PM, May 06, 2008 at 02:30 PM, May 07, 2008 at 06:00 PM, May 09,
2008 at 10:00 AM

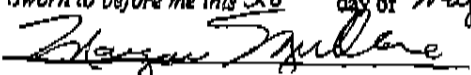
Deponent describes the dwelling as follows:

residential apartment building with secured mechanical fence

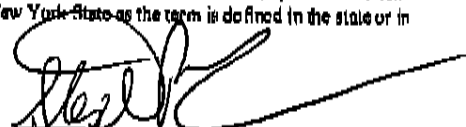
On 5/20/2008, deponent enclosed a copy of the U.S. District Summons in a Civil Case with Complaint in a postpaid envelope properly addressed to the last known address of said served at:

2151 ROUTE 38 APT 708
CHERRY HILL, NJ 08002

I asked the person spoken to whether said served was in active military service of the United States or of the State of New York in any capacity whatsoever and received a negative response. Said served wore ordinary civilian clothing and no military uniform. The grounds of this belief and the source of my information in this regard are the observations and conversations accounted above. Hence, upon information and belief, I assert that the recipient is not in military service of the United States or of New York State as the term is defined in the state or in the Federal statutes.

Sworn to before me this 20th day of May, 2008


MARGARET MULLANE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires October 14, 2009



STEPHEN LEONI
LICENSE NO.: 7134

Nicoletti & Harris, Inc.,
116 John Street
New York, NY 10038

New York

06/26/2008 03:28 FAX 12122675942

SAO 440 (Rev. 8/01) Summons in a Civil Action

RETURN OF SERVICE		
Service of the Summons and complaint was made by me ⁽¹⁾	DATE	5-19-08
NAME OF SERVER (PRINT) STEPHEN P. LEONARD	TITLE	NJ Process Server
Check one box below to indicate appropriate method of service		
<input type="checkbox"/> Served personally upon the defendant. Place where served: <input checked="" type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: After 9 attempts, the client instructed us to leave the documents at the address, documents were slid under door and a copy of the documents were mailed on 5-20-08. <input type="checkbox"/> Returned unexecuted: <input type="checkbox"/> Other (specify):		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL \$0.00
DECLARATION OF SERVER		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on <u>5-19-2008</u> <u></u> Date Signature of Server</p> <p style="text-align: center;"> 24-SEVEN INVESTIGATIONS, SECURITY & LEGAL SERVICES, INC. <u>1313 GREENTREE ROAD, SUITE A</u> CHERRY HILL, NJ 08003 1-877-266-0007 </p>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

Exhibit B

BALESTRIERE LANZA PLLC

225 Broadway, Suite 2900

New York, NY 10007

www.balestriere.net

Date: 07/24/2008

Re: Balestriere PLLC v. Jamal Watson, No. 08-cv-0578

Services Rendered

<u>Date</u>	<u>Description</u>	<u>Charges</u>
1/23/2008	Fee for filing complaint in Federal Court	\$350.00
4/2/2008	Nicoletti & Harris Service Charges	\$97.00
5/19/2008	Nicoletti & Harris Service Charges	\$145.00
Total Expenses:		<u>\$592.00</u>